March 12, 2003

REPORT AND RECOMMENDATIONS OF THE

JUDICIAL COMPENSATION COMMITTEE

Submitted to: The Minister of Justice and Attorney General
for the Province of Manitoba

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1. Background/Context

1.1 Previous JCCs

This is the fifth report of a JCC in Manitoba. The first committee, chaired by Mr. Donald Baizley, Q.C., was appointed in August 8, 1990 and delivered its report on June 7, 1991. It recommended salary increases as of January 1, 1990 from $88,607.00 to $91,000.00, to $93,000.00 effective August 1, 1990, and to $95,520.00 effective January 1, 1991. It also recommended pensions approximately equal to an average of benefits available in Nova Scotia, New Brunswick and Saskatchewan.

The government implemented a 3% salary increase to $91,274.00 effective September 1, 1991, and effective July 1, 1992 a supplemental pension plan was established.

JCC2 and 3 were both chaired by Mr. John Green. JCC2 was appointed October 1992 and reported December 29, 1995. The reduced work week legislation was operational from April 1, 1993 to March 31, 1995. As a result, salaries were reduced 3.8% to $90,444.00. As a result of the legislation, a court challenge was launched which ultimately ended up in the Supreme Court of Canada. JCC2 recommended salary increases of 2.3% ($96,180.00) effective September 1, 1993, and 0.9% ($97,022.00) effective September 1, 1994. It also recommended the supplementary pension benefit be extended to cover judicial service prior

to July 1, 1992.

The government implemented a salary increase of 2.3% to $96,173.00 effective April 1, 1995. There were not any changes made to the pension.

JCC3 was appointed January 1997 and reported June 22, 1998. The aforementioned Supreme Court decision was handed down September 18, 1997 and will be the subject of comment in this report. JCC3 recommended salary increases to $105,000.00 effective April 1, 1997 and $112,000.00 effective April, 1998. It also recommended that the supplemental benefit in the pension plan be extended to cover service prior to July 1, 1992 and made recommendations on parking, professional allowance and costs.

The government implemented salary increases only. The government's decision was challenged in the Court of Queen's Bench. Mr. Justice Scott Wright ordered on July 27, 2001 that JCC3's recommendations about pension, professional allowances, and costs be implemented effective April 1, 1999.

Mr. Justice Wright ruled that the Province had not met the standard of simple rationality as articulated by the Supreme Court. He commented that the Province did not analyze the issues or provide evidence in support of their rejection of the recommendations of JCC3. In the final result all judicial service was determined to be pensionable.

JCC4 was chaired by Mr. Martin Freedman, Q.C. as he was then known. JCC4 was appointed February 2001 and reported April 19, 2002. The salary recommendations were $122,000.00 effective April 1, 1999, $133,000.00 effective April 1, 2000, and $144,000.00 effective April 1, 2001. For pension changes, it recommended a spousal benefit without reduction and a reduction of five years to three years for the averaging calculation.

JCC4 also recommended that Masters should receive a lump sum payment of $2,500.00 for each fiscal year of service from March 31, 1989 to April 1, 1999. The government implemented all the recommendations except the one concerning the Masters.

1.2 Supreme Court Decision

The Supreme Court ruling (*Reference to Remuneration of the Judges of the Provincial Court of Prince Edward Island; R v. Campbell; R v Wickman; Manitoba Provincial Judges Association v. Manitoba (Minister of Justice), [1997] 3 S.C.R. 3*) was a landmark decision. The Court stated that judicial independence is constitutionally protected. Compensation must be at a level so as to protect judicial independence. The Supreme Court stated that the provincial government cannot negotiate directly with the Judges and an independent body must be set up to make recommendations to government.

The Court confirmed that Judges are not civil servants, but a branch of government. Judicial independence has three core characteristics: security of tenure, financial security, and

administrative independence.

At p.193 of the *Judges Reference*, Chief Justice Lamer wrote:

> I want to make it very clear that the guarantee of a minimum salary is not meant for the benefit of the judiciary. Rather, financial security is a means to the end of judicial independence, and is therefore for the benefit of the public. As Professor Friedland has put it, speaking as a concerned citizen, it is "for our sake, not for theirs" (p.56)

2. Introduction

2.1 The Provincial Court Act

Effective April 1, 2002, new provisions were introduced into *The Provincial Court Act* RSM 1987, c. C275 ("the Act"). The changes are significant and will be the subject of discussion and analysis in this report.

The major changes are as follows:

1. A Judicial Compensation Committee ("JCC") is to be appointed on or before April 1, 2002 and on or before April 1 in every third year after 2002.

2. The mandate of the JCC is to investigate, report and make recommendations with

respect to salaries and benefits to be paid to Provincial Court Judges, including the Chief Judge and Associate Chief Judge(s).

3. The report of the JCC is to make recommendations for the fiscal year that begins on April 1 in the year in which the Committee is appointed.

4. The report must set out information as to salaries paid to judges on April 1 of the year in which the Committee is appointed, including salaries for the Chief Judge, Associate Chief Judge, and the Judges of the Courts of New Brunswick, Nova Scotia and Saskatchewan, and also the designated average for the Chief Judge, Associate Chief Judge and Judges. The designated average is the average of the three annual salaries of the Three Provinces being paid on April 1 of the year the JCC is appointed.

5. For purposes of recommending compensation, the JCC is required to consider the following factors:

   (a) the nature of the judges' role and the independence of the judiciary;

   (b) the need to attract and retain excellent applicants to the judiciary and the statistics with respect to the recruitment, retention, resignation and retirement of judges;

   (c) the need to provide fair and reasonable compensation for judges in light of prevailing economic conditions in Manitoba and the overall economic and financial state of the Manitoba economy;

(d) the principle that public resources must be managed efficiently and effectively in the context of the government's current financial position;

(e) the cost of living and the growth or decline in real per capita income in Manitoba;

(f) the manner in which the compensation package paid to judges in Manitoba compares to judicial compensation packages in other jurisdictions in Canada, having regard to the differences between jurisdictions.

6. Certain salary recommendations are binding if they are equal to or less than, for the particular year, the designated salaries for the Judges in Nova Scotia, New Brunswick and Saskatchewan.

7. The report of a JCC is to be provided to the Minister, Chief Judge, the Associate Chief Judge(s), and the Judges of the Court. The report is confidential until tabled in the Legislature. Within seven (7) days after the report is submitted, any of the above parties may request clarification of all or some of the report and the clarification must be provided within fifteen (15) days after the request is made. The report is not considered to be submitted until the clarification is made.

8. The Minister is to table the report within fifteen (15) days if the Assembly is sitting, or if it is not, within fifteen (15) days after it is sitting. As mentioned earlier, certain salary recommendations are binding on the government and the judges. The matter is

referred to a Standing Committee which reports to the Assembly which ultimately receives and votes on the report. The Standing Committee may accept or reject one or more of the recommendations and must provide reasons for each recommendation rejected.

9. On July 6, 2001, Bill 46 amended *The Court of Queen's Bench Act* to provide that Masters receive the same total compensation package as Provincial Court Judges.

2.2 Order in Council

The Act sets out that a JCC is appointed by the Lieutenant Governor in Council. The JCC consists of one person designated by the Judges, one person designated by the Minister, and a Chairperson designated by the Judges' designate and the Minister's designate. Originally, Ms. Colleen Suché was the Judges' designate, Mr. Martin Freedman was the Chairperson, and Mr. Victor Schroeder was appointed by the Minister all pursuant to Order in Council 153/2002. Prior to the commencement of the hearings, Ms. Suché was appointed to the Manitoba Court of Queen's Bench and Mr. Freedman was appointed to the Manitoba Court of Appeal. The Lieutenant Governor in Council enacted an Order in Council 328/2002 to replace Ms. Suché with Mr. Barry Gorlick, and Mr. Michael Werier was appointed Chairperson in place of Mr. Freedman. All references made in Order in Council 153/2002 to the former members and chairperson were to be read as references to the respective substitute.

3. Position of The Provincial Court Judges' Association

The Judges outlined the history of the JCC process in Manitoba and Canada and the struggle to maintain the principle of judicial independence. The Supreme Court decision in 1997 confirmed the principle of judicial independence and identified the main characteristics of judicial independence as security of tenure, financial security and administrative independence.

The Judges noted that independence is a status, not a state of mind, and the above three aspects are the objective guarantee.

It was noted that financial security has three components:

(a) Salaries cannot be disturbed without recourse to an independent, objective and effective tribunal;

(b) There is to be no negotiation about compensation with government;

(c) Judicial salaries may not fall below a certain level. The purpose of ensuring financial security is to allow Judges to concentrate on their work with a certain degree of serenity, removal of any temptation to be influenced by power or money, and that the

public will be protected and satisfied that Judges are impartial.

The Judges noted that in the past there has been a turbulent relationship between the Province and themselves. This has improved and great steps have been made.

Turning to the legislation, the Judges observed that our report is the first that is required to be prospective in nature as opposed to retrospective. They also stated that we should be considering judicial compensation as a package. It would be useful and instructive for our report to give reasons for each specific recommendation and to outline the basis for our total compensation recommendation.

In addition, it would be helpful to address each of the criteria set out in the new legislation and to identify any other criteria we utilize.

The Judges commented on the requirement of the Chair to certify designated averages. The Judges urged that we identify two designated averages because the salary for New Brunswick Judges is being challenged in their Court of Appeal (at writing the appeal had been heard, but a decision had not been handed down). The Judges urged us to not ignore the possibility that the average might be higher and not to rely on averages that may not be correct.

The Judges reviewed the individual criteria. They noted that the criteria are not set out

in a descending order of importance. Their submissions can be summarized as follows:

4. Position of The Provincial Court Judges' Association on Statutory Criteria

11.1(16)(a) Independence of the Judiciary

The Judges submitted that the JCC is not to perform the same role as an arbitrator in an interest arbitration. We are to be lead by considerations as to what is in the public interest. The overriding consideration is the concept of judicial independence as set out by the Supreme Court of Canada. We are a substitute for negotiations without being involved in negotiations per se. This is where the public interest comes into play.

11.1(16)(b) Attraction and Retention of Judges

The Judges pointed out that statistics are of limited use in analyzing this issue. While the total number of applications is known, the identity of the applicants is not known. While attracting candidates is not seen as a pressing issue, it is instructive to note that there are individuals remaining on the provincial court who are eligible for a full pension.

11.1(16)(c) Fair and Reasonable Compensation in Light of Prevailing Economic Conditions

The Judges suggested that this clause asks us to place the issue in a Manitoba

context. The fact that the word "Manitoba" is repeated does not mean it has more importance. It makes sense to refer to Manitoba as it is the Manitoba legislature who will decide on judicial compensation and Manitoba has to pay for it.

Undue emphasis should not be placed on the repetition of the word "Manitoba". Its usage does not vary the meaning of the primary words "fair and reasonable".

The concept of "fair and reasonable" is very important and suggests an element beyond efficient and effective use of public resources which is the next criteria.

11.1(16)(d) Efficient and Effective Management of Public Resources in the context of Manitoba's current Financial Position

The Judges submitted that this subsection asks the JCC to view matters in a Manitoba context. While it is Manitoba tax payers who have to pay, the Committee should not place undue emphasis on the reference to Manitoba. Governments express their policy through allocation of resources.

11.1(16)(e) Cost of Living and the Growth or Decline in Real per Capita Income in Manitoba

The Judges pointed out that this subsection indicates two specific criteria that the Committee must review. The concept of cost of living is self-evident and easy to apply. Growth or decline in real per capita income is not as accessible a concept. There is a

diversity of opinion amongst economists and one must be conscious of increases in the cost of living or whether the public is keeping up economically.

11.1(16)(f) Comparison to other Judicial Compensation Packages in other Jurisdictions having regard to the differences between Jurisdictions

The Judges submitted that this criteria puts one in a conundrum in one sense because the legislature can respond differently on salary versus other components of the compensation package. This does not make sense. The JCC has a strong obligation to remind the legislature that we have considered the total compensation model.

5. Position of Manitoba

Manitoba in its oral presentation on general principles highlighted four major areas. They were as follows:

(1) History and context;

(2) Prior JCC decisions;

(3) The Freedman Report;

(4) The new legislative provisions.

Manitoba reviewed the process prior to the SCC decision. In the past the Judges and the government had discussions through legal counsel to try and achieve a consensus to present to the JCC. That was found to be offensive.

There were problems in the past that complicated the process, including, but not limited to, the time lag between the commencement of the JCC process, the retrospective nature of the JCC process, *The Public Sector Compensation Act*, and Bill 22.

The proper approach is to look at what was found to be reasonable and accepted by the legislature. There would have to be material factors to warrant changes and this becomes relevant when one looks at the recently completed JCC process.

The Province suggested that we ought not to consider ourselves bound by the previous JCC Report, but we should have some rational basis for divergence. If we materially diverge, this might provide a rational basis for the legislature to not accept our recommendations.

The Province urged us to be cautious in examining the compensation packages in other provinces. For example, there are differences in the Courts' jurisdiction. For example, in British Columbia the Provincial Court also has jurisdiction over civil matters involving disputes up to $10,000.00.

The Province encouraged us to adopt a "made in Manitoba" approach.

The Province specifically drew our attention to a number of excerpts from the Freedman Report and asked us to take into account the specific principles and views set out.

They were as follows:

(a) Of all the factors for consideration, the most relevant and important consideration is the compensation received by other Provincial Court Judges, particularly those in provinces of roughly comparable size and economic circumstance to Manitoba (p.44, Freedman Report);

(b) There is logic to the concept of relative parity among provincially appointed Judges (p.49, Freedman Report);

(c) Having considered the argument of the Judges on relative parity to federally appointed Judges, we conclude that we cannot accept that approach (p.50, Freedman Report);

(d) The legislature in Bill 46 (now sections of *The Provincial Court Act*) linked Judges with Masters in terms of compensation. They have never been regarded as being at a level of "relative parity" with Queen's Bench Judges;

(e) While not as helpful as a comparitor as compensation paid to other Judges, Deputy Ministers' salaries should be taken into account (p.61, Freedman Report);

(f) Local economic circumstances are relevant (p.62, Freedman Report);

(g) The Three Province Average is very relevant given the approach of prior JCCs and the new legislation (p.66, Freedman Report);

(h) Historically there has been a certain relativity between Provincial Judges' salaries and Provincial civil service salaries (p.73, Freedman Report);

The Province also reviewed the new provisions in the legislation. The Province does not regard the process of setting judicial compensation as an adversarial one or analogous to an interest arbitration. The Province attempts to bring forward information for the Committee to consider. There is a real public interest in the setting of judicial compensation and in the effective administration of justice and utilization of resources. A component of the public interest is the requirement to consider Manitoba's economic condition. The view that the average Manitoban would have on the issue of judicial compensation is relevant.

The factors set out in the Act are for the most part self-explanatory. With respect to s.11.1(16)(b), the Province stated that Manitoba has attracted excellent candidates for the Bench. With respect to (d), Manitoba considers itself inhibited in its ability to obtain information on whether the Courts are being effectively utilized. This may be cured by the Chief Judge's Annual Report.

With respect to (e) (cost of living and growth or decline in real per capita income in Manitoba), the financial data reflects that it costs less to live in Manitoba than other provinces.

There would have to be a rationale for departing from the salaries set by the Freedman Report.

With respect to (f) (comparison to other provinces), Manitoba differs from the interpretation placed on the section by the Judges. The reference to Manitoba is not a separate requirement, but rather a qualifying statement.

Care should be taken in comparing compensation packages in other jurisdictions. Undue weight should not be placed on Federal Judicial salaries.

6. General Principles

Both the Province and the Judges pointed to certain issues and principles which should form the basis of our report. We will review certain of these issues.

6.1 Judicial Independence

This is the first statutory factor which we must consider in making our report and recommendations, and it is a factor which is fundamental to maintenance of the rule of law in a free and democratic society. The Supreme Court has stated that judicial independence has three main characteristics - financial security, security of tenure, and administrative independence. Both parties acknowledge this consideration, and the legislature confirmed

it when it amended the Act. While we must balance this factor against other statutory factors, we must always bear it in mind.

The purpose behind such a principle is that Judges will be free to perform their very important role free from outside influence.

6.2 Economic Climate

The Province urged that it is important to make recommendations that are consistent with a "made in Manitoba" solution. The "made in Manitoba" principle is based on the view that Judges' compensation must be reflective of the environment within which they function and must bear some relationship to the citizens they serve (p.6). The Judges also pointed to the fact that each province has its own JCC which is indicative that a "made in Manitoba" approach is appropriate (p.29).

The Judges submitted that the JCC ought not to consider Manitoba's economy as an inhibiting factor in determining what is fair and reasonable compensation for Provincial Court Judges (p.6). The Manitoba economy is strong and is likely to grow in the future.

We were provided with a great deal of material and statistics on the present state of the Manitoba economy and projections as to future growth.

In the final analysis, we accept the fact that any recommendations that we make must take into account the economic conditions in Manitoba. The taxpayers of Manitoba are the ones who pay the taxes to fund any increases in compensation. The statutory provisions certainly leave no doubt as to the importance of this consideration.

6.3 Legislative Provisions

This is the first time that a JCC will be making recommendations taking into account the new statutory provisions of the Act. Clearly though the Freedman Report took note of the impending changes to the Act and commented extensively on these new provisions.

We believe that the intent of the legislative provisions in s.11.1(16) is clear and that the legislature has set out concisely the factors that must be considered. While we agree that this is not an exclusive list of factors, we acknowledge that due weight should be placed on these provisions.

We note a number of points. There is a specific mention of Manitoba in three of the six subsections of s.11.1(16). We must be cognizant of this emphasis in weighing all of the information that has been submitted to us. The legislature has signaled that Manitoba's economy is very significant. This is coupled with a recognition that the economic conditions in Nova Scotia, New Brunswick and Saskatchewan have been similar to Manitoba's economic conditions. This is obvious in that the legislature is bound to accept our

recommendations on salaries if the salaries recommended for the Chief Judge, Associate Chief Judge, and Judges of the Court are equal to or less than the designated average (average salary of the equivalent judges) in New Brunswick, Nova Scotia and Saskatchewan.

The legislature provides that the salary information to be set out is to be as of April 1st of the year in which the commission is to report. The salary payable at April 1, 2002 is known in Saskatchewan and Nova Scotia. The salary recommended by the most recent JCC in New Brunswick was rejected by the government and lower salary levels were substituted. The government's decision on salary was unsuccessfully challenged at the trial court level by the judges and is presently before the New Brunswick Court of Appeal.

The Judges have argued that it would be appropriate to designate the average of the Three Provinces, including the amount currently paid in New Brunswick, and also provide a second average which would identify the figure in the event the Court challenge is successful and the JCC report is upheld.

It is our view that we are bound to certify the average that exists as of April 1, 2002. While we certainly can comment on the effect of the average if the challenge in New Brunswick is successful, we are bound to utilize the April 1st date with the result that the designated average may be less than the ultimate average.

We were also mindful of the inquisitorial nature of the process as legislatively

mandated. In view of the closeness in time to JCC4, the quality and quantity of information provided to us by counsel, and with the exception of an inquiry we made to confirm certain calculations presented by the actuary for the Province, we saw no need to expand our investigations beyond the parameters of the detailed information upon which we have relied in making our recommendations.

6.4 Prior JCC Reports

This is the fifth report of a JCC. This report differs from the other reports in a number of respects. Firstly, as has already been mentioned, this is the first JCC to be dealing with provisions in the Act which impose a requirement on the JCC to consider a number of factors. Secondly, this JCC will make recommendations which are prospective in nature. Prior JCCs made retrospective recommendations. Our report will follow shortly after the previous JCC. It is impossible at this juncture to evaluate the impact that the prior JCC Report (approved by the Legislature just weeks before our hearings last fall) will have on matters such as recruitment, retention, retirement or morale, other than to say that a 29% salary increase coupled with substantial pension improvements should, if anything, improve conditions for all concerned. The next JCC will have the benefit of assessing the impact of the previous report as well as the impact of our report as implemented by the Legislature when it makes its recommendations.

While previous JCCs were not dealing with the same legislative framework (the

Freedman JCC did comment extensively on Bill 46 which were the amendments to the Provincial Act), they have considered many of the same arguments made by the parties in these proceedings. To the extent that there has been a consistent position taken by prior JCCs, we believe it useful and prudent to rely on the precedent established by prior JCCs as long as the positions do not conflict with the new legislative provisions. This should not suggest that each JCC does not have a duty to examine afresh the submissions of the parties. But where there has been a consistent view expressed (re the relative importance of a Deputy Minister salary or the salary for a Provincial Court Judge), we believe that consistency should be maintained, and in coming to our recommendations, we have been guided in part by prior JCC findings.

6.5 Total Compensation

The parties agree the JCC should approach the setting of compensation on a "total compensation" basis. While the Act requires that we must only certify salary comparisons with the Three Provinces and not other benefits paid to Judges, it is incumbent that we take into account total compensation. We note that the previous JCC stressed this point on numerous occasions. For example, they stated at p. 71 of their report "in coming to our salary recommendations we have taken into account the other recommendations in this report and particularly the recommendations dealing with pensions. Our entire report and recommendations are based on a total compensation model and, were it not for our pension recommendations, our salary recommendations would be higher".

In coming to our recommendations, we have been guided by the total compensation model.

7. Salaries

7.1 The Provincial Court Judges' Association Request

The Judges identified salary as their most important consideration. They submitted at the hearing that "this is felt to be most important given its tangible impact in the year it is received and its effect on many of the other significant benefits including pension, long term disability, and life insurance. Salary is the foundation upon which total compensation is built".

The Judges noted that is would be appropriate to designate two averages pursuant to s.11.1(17). They argued that the second average would identify the figure in the event that the recommendations of the New Brunswick JCC are upheld. They said that the government should be made aware that the designated average is a median and that the actual average could indeed be higher.

The Judges stated they were of the view that the Canadian average is a more useful comparitor than the Three Province Average. The Judges argued that the Canadian average is more stable than the Three Province Average as a deviation in one province can skew the average. In addition, timing is an important factor because Saskatchewan salaries for future

years are not known. The current salary in Saskatchewan is out of date and it should be expected that there will be an increase for 2003. The Judges asked us to keep this in mind when considering the Three Province and Canadian averages as comparitors to judicial salaries in Manitoba.

The Judges also noted that JCCs in other provinces have employed three different systems in establishing salary rates over the period for which they are responsible. Some established a flat rate that is in place for each year. Others have staggered increases over three years in order to lessen the impact on the provincial government. The third approach is to recommend an increase for year one followed by cost of living increases or something akin to that.

The Judges submitted that this JCC apply a combination of the second and third alternatives and not fix a flat salary for three years.

The Judges argued that Manitoba remains "near the bottom of the barrel and further behind other provinces than their economic conditions would warrant". The Judges urged that we consider a concept of relative parity in that Judges' work ought to be valued in a somewhat similar fashion.

7.2 Province's Response

The Province acknowledged that Judges are independent of government, but reminded the Committee that Judges work in a public sector environment and work alongside civil servants. It is the government that must raise the funds to pay them.

The Province reminded us that there has not been any difficultly in either attracting quality candidates for Judge positions nor in retaining them. It also reminded us that in comparison to other provinces, Manitobans enjoy a relatively low cost of living; the fourth lowest marginal income tax rate and the third lowest sales tax. Manitoba must also make decisions in the context of balanced budget legislation. Affordability is an important principle.

The Province argued that while the legislation refers to a designated average of the Three Provinces, it is Manitoba's position that compensation levels for Judges "should be reflective of Manitoba economic conditions and the relative compensation level of Manitoba workers" (p.16).

Salaries for Manitoba Judges have been increased substantially since 1999. Manitoba's salaries are competitive and any increase to Judges' compensation should be minimal (p.21).

The Province also argued (as they have in the past before every JCC) that the level of

compensation of the Deputy Attorney General should be a consideration in determining appropriate compensation for Judges. Given the breadth, depth and scope of the managerial responsibilities, it could be argued that the Deputy Attorney General's level of compensation should exceed that of the Chief Judge.

The Province referred to portions of the Freedman Report as providing a basis for determining compensation. JCC4 ended up with a recommendation that is a virtual mirror of the Three Province Average. Another touchstone that could be used is the relativity between salaries paid provincially and those paid federally. The provincial salary levels have ranged from 63 to 70% of the federal salaries. If the federal government were to increase federal compensation, 65 to 70% of $210,000.00 would be a touchstone we could use.

The Province argued that we would have to have a sound rationale for departing from those salaries set by the Freedman Committee. This rationale might be found in what has transpired in other provinces, but one has to be careful in analyzing other provinces. Also, there is no indicator that economic conditions have improved in Manitoba.

The Province stated that we should be mindful of the "whipsaw effect". One province tries to catch up with another province and the salary levels are pushed up to a level which was not intended. At some point this has to stop as it has nothing to do with judicial independence.

Lastly, the Province argued that there is no rational basis to increase the salary of the

Associate Chief Judge. Most provinces have one Associate and there is therefore a reasonable basis for the lesser amount in Manitoba as one could assume that the duties could be split among the Judges.

7.3 Certification

By virtue of the legislation, the JCC is required to certify as of April 1, 2002 the salary paid to the Chief Judge, Associate Chief Judge and Judges of New Brunswick, Nova Scotia, and Saskatchewan, and to certify the designated average of these three positions.

The salaries are as follows:

	Chief Judge	Associate Chief Judge	Judge
Saskatchewan	$158,000.00	$153,000.00	$143,000.00
Nova Scotia	$172,000.00	$167,000.00	$157,000.00
New Brunswick	$162,098.00	$157,098.00	$147,098.00

The designated averages are as follows:

Chief Judge	Associate Chief Judge	Judge
$164,032.67	$159,032.67	$149,032.67

7.4 Salary History in Manitoba

Prior to the first JCC, salary changes for Provincial Court Judges were set by Order

in Council. There was no external review process. As set out in JCC4, Judges' salaries were often equated to a step in the Senior Official 6 or 7 civil service salary scale. These levels were also used for Senior Deputy Ministers.

We are reproducing a table which originally appeared in the Freedman Report (p.43) and which sets the salaries of Judges, the Associate Chief Judges, and the Chief Judge. We have added to this chart the salary increases recommended by the Freedman Report and adopted by the legislature.

TABLE 1
MANITOBA PROVINCIAL JUDGES' SALARIES
1986 - 2001

	Judges	Associate Chief Judge	Chief Judge
1986	72,660	74,660	79,660
1987(1)	74,309	76,309	81,309
1987(2)	76,541	78,541	83,541
1988(1)	79,491	81,491	86,491
1988(2)	81,874	83,874	88,874
1989(1)	85,090	87,090	92,090
1989(2)	88,607	90,607	95,607
1991	91,274	93,279	98,272
1992(3)	91,274	93,279	98,272
1993	94,017	96,017	101,017
1995	96,173	98,173	103,173
1996	96,173	98,173	103,173
1997(3)	105,000	108,000	112,000
1998	112,000	115,000	122,000
1999	122,000	125,000	132,000
2000	133,000	136,000	143,000
2001	144,000	147,000	154,000

(1) Increase resulting from movement to a higher step in the salary range (i.e.,

based on civil service scale).

(2) Increase resulting from an overall increase to the salary range (i.e., civil service).

(3) Introduction of Judges' supplementary pension plan (pension improvement not reflected in salaries).

It is interesting to note that Judges' salaries increased by 3% in 1993, 2.3% in 1995, 9% in 1997, 7% in 1998, 8.9% in 1999, 9.02% in 2000 and 8.22% in 2001. Since 1986 Judges' salaries have increased from $72,000 to $144,000. This does not include pension plan improvements in 1992 and the recent changes in 2002 retroactive to 1999. It is, of course, important to note that Provincial Court Judges' salaries in Manitoba lagged behind other provinces in the 1990's and significant increases were obviously warranted. For example, as recently as 1998 Manitoba's salaries, together with Newfoundland, were $112,000.00 and were the lowest in Canada.

7.5 Statutory Considerations and Other Factors

(a) *The* "New" Act

As has been stated earlier, this is the first JCC to have the opportunity to consider the new provisions of the *Provincial Court Act*. We are required to consider the six enumerated factors in section 11.1(16) of the Act, but the legislation does not prohibit the JCC from considering other factors which are relevant. We do however believe that the six enumerated

factors are the most important ones for us to consider.

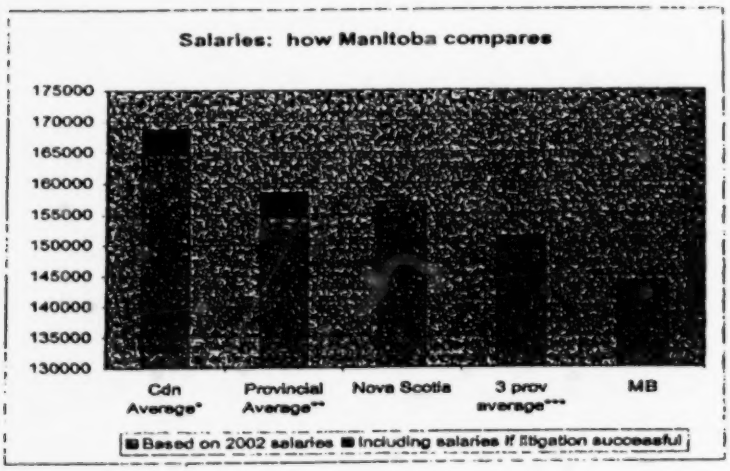
We are also required to certify the salaries for the three levels (Chief, Associate, and Judge) in the Three Provinces for the year 2002, and to also certify the designated average for the Three Provinces. Of particular note is section 11.1(23) of the Act, which establishes that our recommendations will be binding on the parties if the salary recommended for the Judge's position for the year is equal to or less than the designated average for that judicial position.

The provision is an obvious indication of the intention of the legislature with regards to the Three Province Average. It does not mean that the Three Province Average is the most important factor, but it is indicative of a policy decision by the government that it has a great deal of relevance.

We note the reference in the Freedman Report at p. 44 and 45:

> "This new legislation is not binding on us, and Bill 46 does not apply to this JCC. Nonetheless, we take note of the policy decision by the Province that for future JCCs salaries of other judges (as part of the "compensation package") and in particular judges in the Three Provinces, are of considerable relevance as comparables."

We were also provided with information respecting salaries paid in the other provinces, territories, and federally. We produce a table which sets out the salaries in the various jurisdictions.



* Cdn. average calculated using 2002 salaries including all provincial, territorial and federal jurisdictions. The darker portion is the addition should the current litigation in New Brunswick, Quebec and Nfld be successful. (see notes at Tab 24).
** Average of all provinces. The darker portion is the addition should current litigation be successful (see notes at Tab 24)
*** Three Province Average calculated using 2002 salaries, subject to the litigation in New Brunswick. The darker portion is the addition should the current litigation in that province be successful.

These figures are obviously very relevant to our consideration. We acknowledge that the interpretation of this information is made challenging by the fact that there currently is litigation pending in New Brunswick, Quebec, and Newfoundland. We have had the benefit of knowing the figures if the litigation is ultimately successful in these provinces.

We have also taken into account the timing of the hearings. As the Judges pointed out, the Saskatchewan salaries will not be known for 2003, 2004, and 2005. Furthermore, we note that the current salary was set in the year 2000 and was changed for 2001 and 2002. It is reasonable to expect that salaries will be increased in Saskatchewan. We also acknowledge the Judges' submission that at the time the Saskatchewan salary was set in 2000 that it was

$5,000.00 more than the Canadian average. Presently it is more than $15,000.00 behind a comparison with other Canadian jurisdictions. The Saskatchewan Tribunal did acknowledge that their calculation might be below the national average in three years. We also note that the Saskatchewan Court has some civil jurisdiction, and this was considered to be a relevant factor in bridging the large gap between salaries for Judges appointed by the Federal Government and the Provincial Court.

We also take note of the fact that British Columbia and Alberta have jurisdiction over civil matters. The Judges pointed to the reference in the British Columbia Judicial Compensation Committee Report which confirmed that British Columbia Provincial Court Judges have greater jurisdiction than any other Provincial Court.

Overall we recognize that timing of each provincial report is not "in sync" with each other, and therefore the process of determining judicial compensation cannot be a scientific one capable of precise determination. Judicial challenges play a role in this lack of precision. A Compensation Committee can only do its best to take into account all the available relevant information before us.

We recognize that not all factors listed in the legislation are capable of quantification. Provincial salaries for Judges in other provinces are a most relevant factor and capable of identification (subject to the uncertainties listed above).

We adopt the comments of the Freedman Report at p.49:

> "Each province takes into account its particular circumstances but, apart from differences in local factors, which in some cases are not great, there is logic to the concept of relative parity among provincially appointed judges. This is so because, based on the information we have been given, the work of provincially appointed judges across the country is roughly similar in nature. If we look, as we have done, at salaries across the country for provincially appointed judges, we understand what salary levels different provinces consider reasonable to ensure, among other matters, the level of financial security inherent in judicial independence."

We consider the salaries of other Provincial Court Judges to be very relevant factors, particularly those in New Brunswick, Nova Scotia, and Saskatchewan.

(b) **Federally Appointed Judges**

In the past the Judges have argued for relative parity to federally appointed Judges. As of April 1, 2002, federally appointed Judges have received a minimum of $206,400.00 which is likely to be increased based on the formula in s.25 of *The Judges Act*.

The Judges have modified their position. They note that the legislation requires that this JCC make reference to the compensation in other jurisdictions in Canada. If Nunavut and the federal salaries are included, the Canadian average for 2002 is a minimum of $166,265.00 (subject to change on the basis of successful legislation).

The Judges argue that while federal salaries are considered to have some relevance, they are considered to be less relevant than other provincial and territorial salaries in most jurisdictions. They state that the real issue is what weight should be given to federal salaries, and one way of giving relevance is to include them in the establishment of a Canadian average.

We agree that this is one factor to consider in our overall deliberations, but is certainly not determinative. We are of the view, as previous JCCs have expressed, that there is not a good reason to dwell on the federal bench. We do not think it is necessary to analyze the difference in workload or the significance of the work. In fact, we heard little, if any, evidence on these issues.

We do believe in the final analysis that by linking provincial Judges' compensation with Masters' salaries from June 6, 2001 onwards the legislature has confirmed its intention that there is no correlation or link between Provincial Court Judges and Queen's Bench Judges. As the Freedman JCC stated at p.54 in quoting the Province's submission:

> "The Masters have never been regarded as being at a level of 'relative parity' with Queen's Bench Judges".

This is not to diminish the very <u>important</u> role played by the Masters in the justice system, nor to ignore the heavy workload undertaken by them. As well, this is not to diminish the very role played by Provincial Court Judges in the judicial system.

Overall, the federal salaries are a factor to consider, but of limited relevance.

(c) **Deputy Ministers**

The Province submitted that the level of compensation of the Deputy Attorney General should be a consideration in determining appropriate compensation for Judges. It pointed to the historical linkage between the two positions. It is obvious that that linkage was broken by the Freedman JCC. Provincial Judges' salaries are well in excess of those of a Deputy Minister and can be expected to be in the future.

Previous JCCs have been presented with submissions by the Province that Judges' salaries be tied to those of a Deputy Minister. In each case, the JCC expressed the view that the two positions were not comparable and comparisons were of limited use.

We do not think it is necessary to review the various comments made by past JCCs. They are consistent in their approach. We agree with the Freedman JCC that the Act makes no mention of the compensation levels of senior civil servants and only makes reference to other "judicial compensation packages". We also agree with the Freedman JCC that "this is a compelling statement of Provincial public policy". At most, the Deputy Ministers' salary levels are relevant as an indicator of a government's ability to pay.

(d) **Economic Factors**

Both parties presented us with a great deal of information pertaining to Manitoba's economy and how it compares to other jurisdictions. We have taken all of this information into account.

As noted earlier, the Act requires that we must consider six factors in making our report and recommendations. Reference is made to the following:

(a) prevailing economic conditions in Manitoba, and the overall economic and financial state of the Manitoba economy;

(c) efficient and effective use of public resources in the context of the government's current financial position;

(d) cost of living and the growth or decline in real per capita income in Manitoba.

It is not within the scope of this report to undertake a comprehensive analysis of the Manitoba economy, nor to provide an economic forecast. However, certain general principles can be distilled from the wide range of financial information that we had at our disposal.

The Judges argued that this JCC ought not to consider Manitoba's economy to be an

inhibiting factor at this time in the determination of what constitutes fair and reasonable compensation for Provincial Judges. They suggested that Manitoba's economy is growing stronger and the province has a bright economic future. They pointed to government budget materials in April 2002 which are optimistic and predict strong performance and growth in the coming years. Manitoba's credit rating compares favourably to the Three Provinces and its cost of living is comparable.

The Province submitted that Manitoba enjoys a relatively low cost of living. Its economic position relative to the other provinces was fifth to tenth based on a variety of economic indicators in 2001. The Province urged us to consider that compensation levels for Manitoba Judges should be reflective of Manitoba's economic conditions and the relative compensation levels of Manitoba workers. They state that the "made in Manitoba" principle is based on the view that Judges' compensation must be reflective of the environment within which they function and must bear some relationship to the citizens they serve.

Overall, we are convinced that consistent with previous JCCs, Manitoba is about the median among Canadian jurisdictions in terms of income and expenses, and its economy ranks, on the basis of many indicators, in the middle range of the provinces in Canada.

This view is confirmed by information this Committee received from Statistics Canada (October, 2001) which outlines the Conference Board of Canada Forecasts for the provinces. The following rankings are instructive.

Manitoba's Rank	2002	2003	2004	2005
Employment Income per Capita (annual growth)	5	7	4	5
Personal Income per Capita (annual growth)	4	10	6	4
Real Personal Income per Capita (annual growth)	3	10	5	4

While we acknowledge that senior public sector salaries may fall in the lower end of the salary range in comparison to other jurisdictions across Canada, we do not believe that this should be the case for Provincial Judges. We are also aware that certain increases in other sectors of the economy (e.g. other Provincial and Municipal Public Sector increases) have not been significant in past years. We are sensitive to the expectations of ordinary Manitobans, and we have attempted to balance these expectations against the mandatory statutory considerations set out in the Act which embody the principles set out by the Supreme Court.

7.6 Recommendations

In coming to our recommendations, we have considered the role of Judges in a free and democratic society and the need to maintain the independence of the judiciary. We do not believe that existing salaries paid to Judges put them at risk in terms of their

independence. However we must balance this consideration against the other statutorily noted factors. We also believe that excellent candidates are being attracted to the Bench. We were not provided with information that would lead us to believe otherwise. Any evidence that qualified people from the private bar are not applying for these positions is anecdotal. The fact that there are qualified candidates applying for vacancies does not mean that a certain adjustment is not warranted.

All four previous JCCs have given close consideration to the salary levels in the Three Provinces. We also note that the Freedman Report commented that any future JCCs governed by the new legislation will inevitably give extremely close consideration to the salary levels in the Three Provinces. We have taken this into account and we have also considered the National Provincial Court Average (subject to its uncertainty in calculation).

In the final analysis we appreciate that our report and recommendations are closely following those of the Freedman Report. However, past JCC reports have been retrospective in nature and have not been bound by statutory considerations. Our recommendations are prospective in nature. Timing is an important factor because certain provinces will likely experience certain raises in the next number of years. While we are sensitive to the "whipsaw effect" on salaries as each province increases based on other provinces' increases, we believe it is necessary to maintain Manitoba in the mid-pack.

This would be consistent with Manitoba's mid-point economic situation and would be

within Manitoba's ability to pay.

We are provided with a number of different options if we were to implement a salary increase. We have chosen to set the salary for 2002, followed by anticipated cost of living increases of 3.0% in 2003 and 2004.

We recommend the following annual salaries for Provincial Court Judges commencing April 1 in the year indicated, and ending March 31 in the subsequent year.

2002	**$152,000.00**
2003	**3% increase**
2004	**3% increase**

While we appreciate that this amount is slightly higher than the Three Province Average of $149,000.00, it appropriately places the province near the mid-range and anticipates certain increases in other provinces. We believe it is fair and reasonable compensation and is based on a total compensation model.

We recommend that the Chief Judge's salary be $10,000.00 higher than the indicated salary, and the Associate Chief Judges' salaries be $5,000.00 higher to

bring them in line with salaries in other similar provinces.

8. Pensions: History and Present Structure

Prior to 1992, the pension contributions and benefits for Provincial Court Judges were the same as other participants in the Province's Civil Service Superannuation Plan ("CSSP"). The benefits were determined by a formula calculated on the best five years average pensionable earnings, at a two percent accrual rate, multiplied by years of pensionable service, adjusted by a formula. In 1992, a supplementary Plan was established for Judges which allowed for accrual after that date. This Plan provides benefits that, when combined to those the Judge receives under the CSSP, would be produced if the calculation of the allowance was based on an accrual rate of 2.61% (instead of 2%) of final average salary per year of service. The maximum number of years of service accrual equals 23.5. After that, judicial service continues to accrue under the CSSP until 70% maximum is reached, in about five more years.

JCC3 recommended and Mr. Justice Wright approved that supplementary benefits be extended to cover judicial service before July 1, 1992, commencing from the date of appointment to the Bench.

JCC4 recommended and the Legislature implemented two major changes to the Pension Plan. JCC4 noted that "Manitoba's pension in all three cases (20, 23.3 and 28.1

years of service) is substantially below the Three Provinces' pensions, and in some cases, by much greater margins below those in every other jurisdiction in Canada".

In making its recommendations for changes, JCC4 also states that its "report and changes are premised on a total compensation model, and were it not for the salary recommendations, we may have recommended further improvements in the pension arrangement or other benefit enhancement".

The Judges' other request for pension enhancements were not recommended by JCC4. At that time, the Judges were requesting, among other things, a stand alone Plan, and a higher accrual rate of between 3.5 and 4.67%. JCC4 estimated the increase in service costs of the Judges' requests to be $1.2 million per year.

The changes to the Pension Plan as a result of JCC4 had the following financial impacts.

1.	Increase in accrued liabilities (one-time as at March 31, 2002)		$8,381,915.00
2.	Annual cost	- Salary rate updates	$ 226,900.00
		- Spousal coverage	$ 233,100.00
		- Best 3 year	$ 56,200.00
			$ 516,200.00
3.	Interest cost		$ 534,000.00 (approx.)

8.1 The Provincial Court Judges' Association Request

The Judges provided a Statement of Priorities to the Committee. After salary, their requests in order of priority were as follows:

- accrual rate for pensions
- indexing of pensions
- vacation
- long term disability
- professional allowance
- life insurance
- sick leave
- final year averaging for pension
- vision care
- travel expenses

The Judges argued that even with the improvements by JCC4, the Manitoba pension still lags behind most jurisdictions and, in particular, is poorer than the judicial pension plans available in Saskatchewan, New Brunswick, and Nova Scotia.

As they have in the past, the Judges argued that there was discrimination in the treatment of Judges with pre-judicial service with the government and those without.

The Judges also tabled a chart which sets out the comparison of pensions by jurisdiction and at specific periods of accumulation. In particular, it shows the difference in pension accrual by Judges in Manitoba and the Three Provinces at 20, 23.5, 28.5 years and at maximum.

The Judges stated that at 20 and 23.5 years Manitoba is far behind the other provinces. They submitted that the accrual rate be changed to 3.5% for each year of judicial service or alternately 3%. This would bring Manitoba closer in line with other jurisdictions in Canada. They also proposed an accrual rate of 4.67% if Judges 50 years of age or over are appointed.

The Judges also submitted that the indexing of pensions be amended. At present, indexing is provided in the event "funds permit" at the rate of 2/3 of CPI. The Judges proposed that there be guaranteed indexing up to 2/3 of CPI to a maximum CPI increase of 6%.

A further proposal was that calculation of the salary on which the pension is based be changed to that received in the last year of service as opposed to the average of the last three.

The Judges provided us with actuarial calculations of the costs of the various proposals broken down into lump sum cost of the increase and the annual cost of the increase.

8.2 Province's Response

The Province's position was summarized in their written submission which stated:

> "The Judges presently enjoy a pension plan that is better than most participants in Manitoba public and private sector pension plans. Manitoba's position is that it appears that the present level of salary and benefits is sufficient to attract qualified and competent candidates. For these reasons Manitoba does not believe that further enhancement to Judge's pensions are required."

The Province also made the following submissions:

- As a result of the enhanced Supplementary Pension Benefit, Judges receive a pension accrual benefit which is approximately 40% higher than the pensions accrual benefit received by Senior Deputy Ministers.
- In Manitoba there is no mandatory retirement age for Provincial Court Judges.
- Judges at age 70 must receive their CSSP pension, but not their Supplementary Pension. Judges at 70 cease to make contributions to the plan, but do not have to retire.
- JCC4 recommendations increased Manitoba's cost for one year for Judges' pension from 18.87% of payroll (approximately 0.85 million) to 22.76% of payroll (approximately 1.5 million).

Overall, and in response to the Judges' requests for an accrual rate of 3.0 - 3.5%, the Province asked that we critically examine all the characteristics of the plans across Canada. While Manitoba's accrual rate might be less than other provinces resulting in a lesser pension at 20 or 23 years of service, Manitoba fares favourably when comparing other aspects of the

Plan. The maximum pension is a marginally greater percentage. Nova Scotia Judges are required to continue to contribute after reaching full pension. Full vesting takes place after ten years in Nova Scotia as opposed to two years in Manitoba. Indexing in Saskatchewan, British Columbia and Ontario is, like Manitoba, subject to funding capabilities. And most significantly, Manitoba does not have a mandatory retirement age, and in the absence of a mandatory retirement provision, there is no guarantee that any enhancement to the Pension Plan would revitalize the Court.

8.3 Recommendations

The above information was considered by the Committee, together with the written submission and the costs of the proposals as prepared by the actuaries.

Pensions are a very important and integral aspect of judicial compensation, and the Judges placed high priority on its proposals concerning changes to the Pension Plan. In assessing whether to recommend any changes to the Pension Plan, we have kept in mind that our recommendations on pension should be regarded as part of a total compensation model and cannot be separated from aspects of compensation.

We have also kept in mind the fact that many Manitobans have experienced losses in their respective pension plans due to the fall in the stock market. We have also, of course, considered the Province's ability to pay and whether the cost of any recommendations are

within the Province's capacity to absorb.

We recognize that under the Act we are not bound to report on pension numbers in the Three Provinces. However, previous JCCs examined the Judges' pensions in relation to the Three Province Average. The Act in (11.106)(f) does require us to consider "the manner in which the compensation package paid to Judges in Manitoba compares to judicial compensation packages in Canada, having regard to the differences between the jurisdictions.

JCC4 indicated that it thought that the Three Provinces in all the circumstances are very good comparables on matters of judicial compensation, including pensions. We agree that Manitoba has lagged behind other jurisdictions in Canada on both salary and pension. The Legislature accepted JCC4's recommendations on salaries and pension. These had the effect of bringing Manitoba more into line with the Three Provinces on salary, but still left them behind on pension. We recognize that it is difficult to remedy the differences at one time and we accept that it must be staged. We believe that JCC4 took this into account in reaching their conclusions.

Utilizing the existing salary structure and accrual rate as of 2002, after 20 years of service, a Manitoba Judge would be entitled to a pension of $69,426.00 compared with $75,365.00 for a New Brunswick Judge, $93,091.00 for a Saskatchewan Judge, and $95,900.00 for a Nova Scotia Judge.

After 23.5 years of service, a Manitoba Judge would be entitled to a pension of $81,576.00 compared with $88,554.00, $93,091.00, and $95,900.00 for New Brunswick, Saskatchewan and Nova Scotia respectively.

We do not see any reason why Manitoba Judges must work longer than other Judges in Canada to reach the maximum pension. We also believe that it is consistent with the provisions of the Act that this aspect of Judges' pensions be amended to reflect this level of retirement for a maximum pension.

Based on estimates received from the actuaries, we understand the costs of the proposal to establish the accrual rate at 3.0% (based on the present Judges' Plan and taking into account the proposed salary increased, the present CSSA, the methodology reserved in the Consolidated Financial Statements of the Government, and indexing at the present supportable level of indexing) are as follows:

		Cost
1.	Increase in accrued liability (one time)	$5,441,371.00
2.	Annual service cost	$ 558,805.00
3.	Interest cost	$ 360,011.00

The increase in accrued liability is a direct result of the required changes in the pension and salary arrangements and are to be expected when salaries and pensions are improved. The interest factor is to be expected when liabilities are not funded, but accrued.

Accordingly, we recommend that the Manitoba Plan be amended to allow a full pension after 23.5 years which would require an annual accrual rate of 3.0%.

We have considered the other requests of the Judges regarding pensions and we are not prepared to recommend any further changes in light of the costs of our recommendations and the costs of the other proposals.

We believe these changes are fair to both the Province and the Judges. We believe that these changes bring Manitoba in line with the Three Provinces and other jurisdictions. We saw no reason to maintain the status quo and we believe Manitobans will accept the principle that their Judges not be on the low end of the pension compensation scheme in Canada. We believe this change is consistent with the spirit and intent of the Act.

Our recommendations on pensions should be regarded as part of a total compensation model, and we have taken into account our recommendations on salary in making our recommendations on pension changes.

9. Other Issues

9.1 Issues Raised by The Provincial Court Judges' Association

As they did in their submissions to JCC4, the Judges raised a number of other issues that relate to their benefits and priorized them as referenced earlier on in this report.

We summarize these other issues and the Judges' proposals as follows:

(a) Vacations

At present, Judges receive 25 days of vacation during their first 19 years of service, increasing after that period to 30 days. If a Judge had prior service as a Crown Attorney or government lawyer, this is included in the service. This results in situations where Judges who have served the same time on the Bench receive different vacation entitlement. The Judges argued that Manitoba is the only province in which government service affects the number of vacation days. New Brunswick and Saskatchewan Judges receive 30 days, while Nova Scotia Judges receive an increase from 25 to 30 days after 5 years.

The Judges have asked for equal treatment for all Judges, irrespective of prior government service. In addition, the Judges clarified their position on vacation

carryover. Vacation carryover will be calculated as at the end of the vacation year. No Judge will accumulate vacation carryover in excess of a total of 60 days. The minority of Judges with more than 60 days to their credit will not accumulate more carryover days until their total has fallen below 60 days. The minority of Judges with more than 60 days to their credit will be permitted to use their outstanding vacation in a manner to be determined by the Chief Judge and the Court Management Committee in consultation with the individual Judge involved.

(b) Sick Leave

Under the present system, sick leave accrues at the rate of approximately one day per pay period to a maximum accrual of 208 days. The Judges submitted that there be no limit in the amount of sick leave to which a Judge is entitled except to the extent that a Judge becomes eligible for long term disability. These benefits vary from province to province.

(c) Long Term Disability

Under the current system, Judges receive payments of 70% of their salary when they are unable to perform the work of a Judge. The current system provides for long term disability until age 65 and because many Judges work past the age of 65, the Judges said that there should not be a cap at 65, but at the age of 70. The cost would be

minimal.

(d) Life Insurance

At present, Judges participate in two plans administered by the Manitoba Civil Service Superannuation Board. Judges used to enjoy the same coverage as civil servants. At age 56, coverage is reduced. The Judges want to have the same coverage as civil servants, with the reduction beginning at age 66.

(e) Professional Allowances

Currently, the Province reimburses Judges for all reasonable expenses incurred in carrying out their duties and are provided with the necessary tools to perform their duties. The Judges say that the area of professional allowance has been "a source of great frustration and discontent". They provided examples of a lack of consistency and understanding within the administration of this arrangement. The Judges, as they did before with JCC4, have proposed an annual allowance of $3,000.00, which use would be in the discretion of the individual Judge.

(f) Travel Expenses

Currently, Judges are reimbursed for meals (limited to specific amounts) and hotels

that are government approved. The Judges submit that the daily maximums for meals are "woefully inadequate" and the hotel policy is far too restrictive. They argue that the standard across the country is that actual costs are allowed provided they are reasonable. They request that this system be implemented in Manitoba.

(g) Extended Health Care Benefits

The Judges proposed that vision care be extended to Judges to a maximum of $200.00 every two years. The Judges proposed two additional changes which they confirmed would be at no cost to the government as Judges pay the premiums. They proposed a change to the current benefits to remove the $200.00 maximum on prescription drugs. They also proposed the addition of coverage for hearing aids.

9.2 Province's Response

As it has argued in the past, the Province's position was that standardization of Judges' benefits with the civil service is appropriate unless there are significant considerations that in the view of the Committee require differential treatment to maintain judicial independence.

In that vein, the Province indicated agreement with the following extended health care benefits (if this JCC felt it was appropriate):

(a) vision care proposal;

(b) removal of $200.00 maximum on prescription drugs;

(c) coverage for hearing aids.

In general, with certain minor exceptions, the Province was opposed to the proposals on benefits put forward by the Judges.

Regarding vacations, the Province saw no reason to interfere with the distinction between Judges with government service. As to professional allowances, the Province felt that there should not be any change. There is not a separate line item in the budget for professional allowances. Only Saskatchewan Judges receive the $3,000.00 being sought by Manitoba Judges. If this JCC feels there should be a change, the Province suggested a figure of $1,500.00 per Judge. The payments would be pursuant to guidelines in place in Ontario and Saskatchewan and final approval for expenditures would rest with the Chief Judge. Future JCCs could track the expenditures and determine if any further changes were warranted.

On the sick leave issue, the Province indicated that we might consider a made in Manitoba solution to address the potential problem faced by a recent appointment who goes on sick leave. The Province suggested that because the current limitation under the Plan is 120 calendar days and therefore 85 days are needed (or 5 1/4 years of service), 85 days could be advanced to new Judges to provide immediate coverage. These credits will

continue but will be eroded until earned by the respective Judge.

As to the long term disability plan, the Province felt that no change was warranted in that there was no reason to change the period for which benefits are payable (up to age 65).

On the issue of life insurance, the Province's position is that the Judges be entitled to the same provisions as the civil service and accordingly were not opposed to coverage reductions beginning at age 66.

On the issue of hotel accommodations, the Province stated that there was no evidence of anything inappropriate with government approved facilities and the current system should remain intact.

9.3 Recommendations

JCC4 did not make any recommendations for change in the benefits area given the cost implications involved in these changes and the costs of their other recommended changes for salary and the pension plan.

Furthermore, JCC4 chose not to make recommendations in other areas which the Province indicated it might consider suitable in light of similar benefits being paid to civil servants. JCC4 stated that Judges are not civil servants nor employees and have many

benefits as a result of the independent nature of their positions. We agree with that proposition.

However, there are a number of areas that the Judges proposed change and the Province was not opposed. **We recommend change be made in these areas which include:**

(a) No reduction in life insurance coverage until age 66;

(a) Addition of vision care plan;

(b) Removal of $200.00 maximum on prescription drugs (Judges pay premium);

(c) Addition of hearing aid coverage (Judges pay premium).

Both parties support these changes and we feel they are fair and reasonable.

In addition, we are prepared to recommend three further changes in the benefits package. First, we recommend that there no longer be discrimination between Judges who have pre-judicial service with the government and those without it as it relates to the issue of vacation. It does not make any sense to us to continue this system. No other jurisdiction maintains this policy. Pre-judicial service should not be a basis for discrimination in vacations. **We therefore recommend that all Judges have 6 weeks of vacation.**

Second, on the issue of sick leave, we recommend that the suggestion of the Province be adopted and that newly appointed Judges have an advance of 85 days sick leave on their appointment and that these credits continue but will be eroded until fully erased.

Finally, we believe that it is necessary to recommend changes in the professional allowance system. Although Mr. Justice Wright's order on expenses is appropriate and reasonable, problems persist. Based on the Judges' submission on this issue, it is an extreme irritant to the Bench. **We therefore recommend an allowance of $1,500.00 per Judge to be paid on the approval of the Chief Judge. We further recommend that the guidelines presently in use in Saskatchewan and Ontario be adopted.**

We make no comment on the Province's warning that the funds for these allowances will have to come out of the existing Judicial Services budget.

We believe that all of the above recommendations are fair and reasonable to the Province and the Judges. They are part of a total compensation model. We believe they address inequities in the system and as well, do not carry cost implications so serious as to impose a burden on the Province. They are consistent with the provisions of the Act.

9.4 Costs

Under the Act, the Judges of the Court are entitled to costs with respect to their participation in the compensation committee process. The Lieutenant Governor in Council may make regulations prescribing costs under this subsection and may set a total limit on the costs.

Regulations have not been made.

JCC4 recommended that the Province pay 75% of the Judges' costs and fees up to a maximum aggregate payment by the Province of $30,000.00. In their submission the Judges agreed with the approach by JCC4. The Province suggested a similar approach be taken and the rate payable to counsel ought to be the approved rates. The Province reminded us the JCC3 costs were up to a cap of $15,000.00.

We echo the comments of JCC4 with respect to costs. We received extensive submissions from the parties. Counsel were of great assistance in explaining the issues. This process exists to ensure an independent and sound judiciary which ensures ultimately to the benefit of the Province.

We therefore recommend that the Province pay 75% of the Judges' costs and fees up to a maximum aggregate payment by the Province of $30,000.00. We believe,

as did JCC4, that the percentage and maximum amount of the payment is fair and reasonable to both sides.

All of which is respectfully submitted.

Dated at the City of Winnipeg, in Manitoba, this 12 day of March, 2003.

Michael D. Werier, Chairperson

Victor H. Schroeder, Q.C.

Barry L. Gorlick, Q.C.